



International Convention
on the Elimination
of all Forms of
Racial Discrimination

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COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 9 OF THE CONVENTION

Fourteenth periodic reports of States parties due in 1996

Addendum

INDIA*

[10 November 1994]

* The present document contains the tenth to fourteenth periodic reports consolidated in one document which were due on 5 January 1988, 1990, 1992, 1994 and 1996 respectively. For the eighth and ninth periodic reports of India, submitted in one document, and the summary records of the meetings at which the Committee considered those reports, see documents CERD/C/149/Add.11 and CERD/C/SR.796 and SR.797.

Introduction

1. India became a party to the International Convention on the Elimination of All Forms of Racial Discrimination by ratification on 3 December 1968. It has fulfilled its obligations in accordance with the requirements of article 9 of the Convention and has submitted nine periodic reports so far.

2. India's consolidated tenth, eleventh, twelfth and thirteenth report covers the period 1986 to 1996 and updates information presented in the last consolidated periodic report. Being a country with a federal system, there are considerable difficulties in the collation of information from state governments and other institutions on the issue of "race" per se, which, as will be explained below, does not impinge directly on the consciousness of the Indian people. The delay in submission of periodic reports has been mainly on account of this reason. The Government of India would like to reassure the Committee of its highest respect for the provisions of the Convention and the deliberations of the Committee.

3. In compliance with the general guidelines on the submission of periodic reports, India's combined report comprises two parts. In Part I, India's overall approach and policies towards eliminating all forms of racial discrimination and the general legal framework prohibiting racial discrimination have been outlined. In Part II, information has been provided on the fulfilment of India's obligations under the Convention.

I. GENERAL POLICIES AND OVERALL LEGAL FRAMEWORK

4. Any consideration of India's overall approach and policies towards the elimination of racial discrimination must begin with an understanding of the racial diversity of India. In matters related to race, India's experience may be seen as sui generis and the quintessence of Indian society is the intermingling of races.

5. History has made India a home to people of diverse origins. Over the millennia, the assimilative character of the Indian civilization combined with the process of intermingling of inhabitants with waves of immigration have resulted in a composite society. A variety of racial sources have therefore contributed to the "mix" that is the hallmark of the Indian people today. The fusion of these diverse racial elements over centuries has meant that Indian society is not racially or ethnically homogenous. Categorical distinctions of "race" or "national or ethnic origin" have ceased to exist and race itself as an issue does not impinge on the consciousness or outlook of Indian citizens in their social relations. Today India is a mosaic of different groups who seek identification in terms of language, religion, caste or even regional characteristics rather than race, colour or ethnic origin.

6. India's previous reports to the Committee have in response to queries from members incorporated information with regard to constitutional protection enjoyed in India by "Scheduled Castes and Tribes" and the specific measures adopted by the Government for their economic and social improvement. The term "caste" denotes a "social" and "class" distinction and is not based on race. It has its origins in the functional division of Indian society during ancient times. Segments of the Indian population known as "Scheduled Tribes" are a

part of the vast ethnic diversity of India where intermingling has been less pronounced. Measures of positive discrimination have been incorporated into the Indian Constitution to enable Scheduled Castes and Scheduled Tribes, who tend to be among the economically underprivileged classes, to enter the mainstream of national life and to facilitate their intermingling with the rest of the Indian population.

7. Article 1 of the Convention includes in the definition of racial discrimination the term "descent". Both castes and tribes are systems based on "descent" since people are normally born into a particular caste or a particular tribe. It is obvious, however, that the use of the term "descent" in the Convention clearly refers to "race". Communities which fall under the definition of Scheduled Castes and Scheduled Tribes are unique to Indian society and its historical process. As conveyed to the Committee during the presentation of India's last periodic report, it is, therefore, submitted that the policies of the Indian Government relating to Scheduled Castes and Scheduled Tribes do not come under the purview of Article 1 of the Convention. As a matter of courtesy to the members of the Committee, the Government is, however, happy to provide any information that they may require on this subject.

8. Notwithstanding the racial heterogeneity, the Constitution of India specifically prohibits discrimination on the basis of "race". This is mainly because the framers of the Indian Constitution largely drew upon the provisions of the United States Constitution and the Charter of the United Nations while drafting the chapter on fundamental rights. An eminent scholar provides insight into the framing of these provisions of the Indian Constitution as follows:

"During the framing of India's Constitution, some preliminary notes on fundamental rights were prepared by Mr. B.N. Rao (who was the Constitutional Adviser), Mr. K.M. Munshi and Mr. K.T. Shah (who were members of the Advisory Committee on Fundamental Rights). In preparing the notes on fundamental rights these members referred to the Constitutions of various countries, in particular the Constitution of the USA. The draft articles prepared by Mr. Munshi formed the basis of discussion in the Sub-Committee on Fundamental Rights. Clause 5 of this draft relating to the right to equality and the guarantee against discrimination was adapted from the US Constitution, Amendment XIV, Section I. From the notes and discussions of this Committee one can see that the provisions of the United Nations Charter, which contain direct references to 'rights of mankind irrespective of race, colour or sex', also influenced the framers of India's Constitution who felt that there should be no discrimination between man and man" (B. Shiva Rao, The Framing of India's Constitution, vol. II).

9. Other factors that inevitably also influenced the thinking of the framers of the Indian Constitution included the experience of racial discrimination during the colonial rule, Mahatma Gandhi's struggle against apartheid in South Africa and the moral outrage of the world community against racism in the immediate aftermath of the Second World War.

10. Today, the Constitution of India and, inter alia, the Indian Penal Code and the Representation of Peoples Act provide the general legal framework within which "racial discrimination" is prohibited. The Constitution prohibits discrimination on grounds of religion, race, caste, sex or place of birth. It guarantees to all persons equality before the law and equal protection of laws within the territory of India. It further incorporates the freedom of speech and expression, the right to form associations and unions, and the right to life and personal liberty. The right to remedies for the enforcement of fundamental rights is also provided for by the Constitution. It should be noted in this regard that "race" as a ground for discrimination has never been invoked before the courts of law of India so far.

11. Provisions of the Indian Penal Code prohibit actions that promote hatred, enmity and ill-will on grounds of race or religion. The Representation of Peoples Act, 1951, provides for the punishment of persons who attempt to promote feelings of enmity on grounds of race.

12. An independent judiciary created by the separation of powers envisaged in the Constitution, the emergence of a free press, an active NGO movement and a range of institutional mechanisms of civil society have complemented the efforts of the Government to eliminate racial as well as other forms of discrimination against individuals. The establishment in recent times of a National Commission for Scheduled Castes and Scheduled Tribes, a National Commission on Minorities, and a National Human Rights Commission with wide-ranging powers deserve special mention in this regard.

13. At the international level, India's commitment to the cause of elimination of racial discrimination in all its forms, including apartheid, has been reflected in the role it has played in this field. India was the first country to inscribe the issue of racism in South Africa on the agenda of the United Nations in 1946. Since independence, this opposition to racial discrimination has been reflected in a policy that saw the imposition of comprehensive sanctions against apartheid South Africa, the severing of diplomatic ties with that country and India's accession to the International Convention on the Suppression and Punishment of the Crime of Apartheid in October 1977. As a founding member of the Non-Aligned Movement, India also sought to ensure that opposition to racial discrimination and elimination of all forms of exploitation and inequality were accorded the highest priority in the agenda of the Movement.

14. As a matter of policy, India is committed to supporting the principle of equality of States and individuals, including racial equality, and will continue to work for this objective in the appropriate international forums.

II. IMPLEMENTATION OF ARTICLES 2 TO 7 OF THE CONVENTION

Article 2

15. The Constitution of India prohibits discrimination on the grounds of race. Article 15 (1) provides that the State shall not discriminate against any citizens on grounds of religion, race, caste, sex, place of birth, or any of them. Article 15 (2) provides that no citizen shall on grounds of religion, race, caste, sex, place of birth or any of them be subject to any

disability, liability, restriction or condition with regard to (a) access to shops, public restaurants, hotels and places of public entertainment or (b) the use of wells, tanks, bathing ghats, roads and places of public resort, maintained wholly or partly out of State funds or dedicated to the use of the general public. Article 14 of the Indian Constitution provides that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

16. The provisions of the Indian Constitution clearly prevent the Government from sponsoring, defending or supporting racial discrimination on any ground. The Government has, in fact, been actively supporting persons and organizations fighting against racial discrimination in South Africa and various other parts of the world.

17. On the eve of the entry into force of the Constitution, a step towards the abolition of racial discrimination was taken by enactment of the Removal of Racial Discrimination Act (XVII of 1949) in terms of which privileges enjoyed by Europeans and Americans under the British regime in matters of criminal law and procedure were taken away. As the Constitution specifically prohibits racial discrimination, all pre-constitutional laws inconsistent with constitutional provisions became void to the extent of such inconsistency by virtue of article 13 (1). Article 13 (1) further provides that the State shall not make any law which takes away or abridges the fundamental rights and any law made in contravention of this provision shall, to the extent of the contravention, be void. There is thus a built-in provision in the Indian Constitution to rescind or nullify all laws that may have the effect of sanctioning racial discrimination.

18. While article 15 (1) of the Indian Constitution prohibits discrimination by the State, article 15 (2) extends the prohibition to private persons. This prohibition is further developed by the provisions of the Indian Penal Code. The Indian Penal Code, under sections 153 (A), 153 (B) and 505, makes promotion of disharmony, feelings of enmity and hatred or ill-will on grounds of race punishable with imprisonment and fine.

19. The State does not encourage anything which tends to strengthen racial divisions. It has on the contrary encouraged and supported multiracial organizations which led the struggle against apartheid.

20. The Indian Constitution contains certain special provisions for Anglo-Indians. Under article 366 (2), an Anglo-Indian has been defined as "a person whose father or any of whose other male progenitors in the male line is or was of European descent but who is domiciled within the territory of India and is or was born within such territory of parents habitually resident therein". Some temporary preferences with regard to employment and educational grants for Anglo-Indians for a 10-year period were provided by the Constitution. These preferences for Anglo-Indians were essentially to cushion the loss of the privileged position they enjoyed prior to independence. Articles 331 and 333 also provide that the President or governor of a State can nominate members of the Anglo-Indian community to the Parliament and Legislative Assembly if they feel the community is not adequately represented.

Article 3

21. India has consistently condemned racial segregation and apartheid, worked for their elimination and has been in the forefront of actions of the international community in this regard. Prior to independence, Mahatma Gandhi has started a passive resistance movement while living in South Africa. India was the first country to inscribe the issue of racism on the agenda of the United Nations as early as 1946. This conviction was translated into a post-independence policy that included imposition of sanctions against South Africa, severance of all ties with South Africa, active participation in the evolution of the International Convention on the Elimination of Racial Discrimination and accession to the International Convention on the Suppression and Punishment of the Crime of Apartheid. To give effect to the latter Convention, India enacted the Suppression of Apartheid Act in 1981.

22. In addition, India played an active role in the Non-Aligned Movement, the Commonwealth and all other international forums on the question of apartheid and racial discrimination in South Africa. Particularly, it maintained an active role in the United Nations Special Committee against Apartheid, the principal United Nations organ keeping South Africa's policy of apartheid under constant review. India was also actively associated with Commonwealth activities on South Africa and was a member of the eight-member Commonwealth Committee of Foreign Ministers set up at the Vancouver Commonwealth summit meeting to monitor the implementation of a programme of action on South Africa.

Article 4

23. Under the Indian Penal Code, acts prejudicial to the maintenance of harmony between different races are punishable by law. Details regarding the IPC have been presented to the Committee in earlier periodic reports.

24. No organization which promotes and incites racial discrimination can legally exist in India. The Constitution and the laws in this regard make it clear that the State will take all necessary measures within the law to prevent activities and propaganda which promote and incite racial discrimination. Members of any organization in breach of the law would automatically become liable for prosecution under the relevant provisions of the Indian Penal Code.

25. No public authority or public institution, national or local, within India can promote or incite racial discrimination. Prohibition of discrimination is a fundamental right under the Indian Constitution and all fundamental rights are enforceable in courts of law not only against executive organs of the State but also against the Parliament and State legislatures as well. Article 12 of the Constitution defines the term "State" to include the Government and Parliament of India; the government and the legislature of each State and all local or other authorities within the territory of India are under the control of the Government of India. By judicial construction, the expression "State" has been held to further include statutory bodies and statutory corporations such as insurance corporations, nationalized banks, airline corporations, electricity boards and others having the power to make binding rules and regulations.

Article 5

26. The rights of all persons to equality before the law and equal protection of the laws within the territory of India is a fundamental right under the Constitution.

27. Article 21 of the Constitution guarantees to every person the right to life and personal liberty. It provides that no person shall be deprived of life or personal liberty except according to procedure established by law. Any violence or bodily harm inflicted by an individual group or institution comes within the purview of the normal criminal laws of the country.

28. Full political rights are guaranteed to all citizens under article 19 of the Indian Constitution. Article 16 guarantees equality of opportunity in matters of public employment. India's political system is based on parliamentary democracy and elections are periodically held on the basis of universal and equal adult franchise. All citizens have full rights to take part in Government and the conduct of public affairs. Article 325 of the Constitution ensures that no person shall be ineligible for inclusion in the general electoral roll on grounds only of religion, race, caste, sex or any of them. Section 125 of the Representation of Peoples Act further provides that any person who in connection with an election promotes or attempts to promote on the grounds of religion, race, caste, community or language feelings of enmity shall be punishable with imprisonment as well as fine.

29. Article 19 of the Constitution guarantees the freedom of movement and residence, opinion, expression, assembly and association within the territory of India to all citizens. Article 25 guarantees the freedom of religion. Article 300A provides to all persons the right to property. The right to inherit is provided under the civil laws of the country. The right to nationality is covered by the provisions pertaining to citizenship in the Constitution. The right to marriage and choice of spouse is also provided for, subject to a minimum age, under the civil laws.

30. The right to form and join trade unions as well as access to public places are fundamental rights under the Constitution. Other economic, social and cultural rights provided under the Convention mostly fall within the ambit of the Directive Principles of State Policy of the Indian Constitution. These Directive Principles are considered fundamental in the governance of the country even though they are not enforceable by a court of law and the Constitution declares that it shall be the duty of the State to apply these Principles in making laws. The Directive Principles elaborated in Part IV of the Indian Constitution provide for the right to work, education and public assistance within the limits of the State's economic capacity and state that the State shall direct its policy towards securing equal pay for equal work, just and humane conditions of work, living wages, etc. They further call upon the State to provide free and compulsory education to children below the age of 14 and declare it a duty of the State to improve public health.

Article 6

31. The Indian judiciary, headed by the Supreme Court, is totally independent and all rights provided by the Indian Constitution are enforceable by the judiciary. The right to move the Supreme Court is itself a fundamental right. The High Courts at the State level can also be moved for the enforcement of relevant rights. In cases where violation of rights demands quick redressal the Supreme Court and High Courts have the power to issue writs. The structure of the judicial system spreads across the whole country and there is an entire hierarchy of courts which go down to the grass-roots level, permitting easy access to all. Individuals who cannot afford to engage lawyers are provided free legal aid and assistance. Establishment of a legal system which promotes justice on the basis of equal opportunity and provision of free legal aid is one of the Directive Principles of State Policy. The legal community of India has also been highly innovative in promoting lok adalats (people's courts) and legal aid camps where free legal aid is provided and administrative authorities are asked to solve legitimate grievances on the spot.

32. The right to compensation for violation of any human right does not form part of any statute but courts in India have awarded compensation to victims of violations of human rights in various cases. Recently, the Supreme Court held that if the State violates the human rights of a citizen, a claim for monetary compensation would be regarded as a public law remedy (Milabati Behera v. State of Orissa, AIR 1993 SC 1961). Human rights jurisprudence in India has now firmly established that the Supreme Court or a High Court has power to award compensation under articles 32 and 226 for a gross violation of human rights.

Article 7

33. In compliance with its obligations under article 7, India has sought to combat all forms of prejudice which would lead to situations of racial discrimination or communal hatred. To this end, deliberate and sustained efforts have been made towards shaping the attitudes of the youth from the school onwards through the education system and the information media. The school curriculum in India devotes considerable attention to constitutional provisions related to fundamental rights. In addition, the values of secularism, respect for human rights, tolerance, etc. are sought to be imparted through the education system.

34. The freedom of the press and media in India also ensures that the public enjoys unhindered benefit of freedom of opinion and expression, which India perceives as contributing to tolerance and friendship between nations and peoples. In order to ensure that racial or other prejudices are not propagated, policy guidelines have been evolved by institutions such as the Press Council of India for private media and the Government for the State-run media. The Government has also set up a Directorate of Field Publicity which, inter alia, prepares programmes on non-discrimination, tolerance and friendship at the grass-roots level and has been using traditional and other means of communication for the purpose.

35. The Indian Council for Cultural Relations (ICCR), an autonomous body of the Ministry of External Affairs, undertakes various interactive programmes on occasions such as Africa Day to celebrate friendship between peoples and races. It provides special counselling services to foreign students in India under the various scholarship programmes administered by the Government. ICCR also takes action to ensure the educational and personal welfare of foreign students, the vast majority of whom come from developing countries and therefore represent different races and peoples from all over the world.

36. The Government has sought to promote international understanding and friendship by providing technical expertise and scholarships to a growing number of foreign students under the Indian Technical and Economic Cooperation Programme, the Colombo Plan and the Special Commonwealth African Assistance Plan, apart from extending bilateral assistance to developing countries within the limited resources available.

37. As part of its efforts to fulfil obligations under the various human rights covenants to which it is a signatory, the Government of India has attached high importance to awareness generation and human rights education. This awareness generation has taken many forms, including sensitization of the government machinery at all levels including police, paramilitary forces and the armed forces on the need to observe, promote and protect human rights. In this effort, the Government has worked closely with actors of civil society such as NGOs and the National Human Rights Commission. Human rights as a subject has been included in the training schedule of various academies imparting training to police and armed forces, viz. Sardar Vallabhbhai Patel National Police Academy, Hyderabad and the National Institute of Criminal and Forensic Sciences, Delhi.